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99TH CONGRESS
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SENATE

REPORT
99-256

FEDERAL DEBT RECOVERY ACT OF 1985

MARCH 7 (legislative day, FEBRUARY 24), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 209]

The Committee on Governmental Affairs, to which was referred the bill (S. 209) to amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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I. SUMMARY AND PURPOSE

S. 209 would amend chapter 37 of title 31 of the United States Code to authorize the Department of Justice to enter into contracts with private counsel to provide legal services to collect non-tax debts owed to the Federal Government. The purpose of the bill is to facilitate the collection of civil debts owed Federal agencies on an accelerated basis by using the expertise and specialization of private counsel. Enactment of S. 209 will enable the Government to

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reduce its backlog of seriously delinquent debt claims and increase revenues.

The Department of Justice is currently responsible for litigating most federal debt claims, but in some judicial districts, its U.S. Attorney offices are not equipped or adequately staffed to aggressively litigate and collect portions of the current backlog of defaulted debts. At a time when drug trafficking and violent crime continue to increase dramatically, the limited resources of the Justice Department should be directed to these priority cases. S. 209 will authorize the Department of Justice to utilize the experience and expertise available in the private sector to litigate debt cases and significantly improve the government's ability to cost-effectively collect delinquent debts.

II. Background

The Office of Management and Budget reported that, at the beginning of fiscal year 1985, $19.9 billion in non-tax delinquent debts was owed to the United States Government. Of this amount, $6.2 billion was more than 6 years overdue. As of September 30, 1985, non-tax delinquent debts had grown to $23.6 billion, double the $11.7 billion in non-tax delinquent debts reported outstanding in fiscal year 1981. This dramatic growth in delinquent debts demonstrates the need to strengthen the government's ability to collect monies owed to it.

Non-tax delinquent debts

Fiscal year:	*Billions*
1981	$11.7
1982	10.1
1983	16.9
1984	19.9
1985 (as of Sept. 30)	23.6

Furthermore, the failure of the government to recover these debts on a timely basis impairs the chances of future recovery. Based on statistics provided by the Office of Management and Budget, the Committee estimates that $6.7 million is lost each day due to the running of the statute of limitations. Coupled with the increased costs of borrowing and lost interest, total monies lost to the government and the taxpayers, is estimated at $5.37 billion per year.

With the enactment of the Debt Collection Act of 1982 (Public Law 97-365), the federal government is now permitted to charge interest and penalties on delinquent debts, to offset the wages of federal employees having delinquent debts, to report delinquent debtors to credit bureaus to affect credit ratings, and to contract with private collection agencies to pursue recovery. Dunning letters are now sent regularly, debtors are located using Internal Revenue Service records, and, in general, more resources are being devoted to collecting debts. In addition, the 1984 Deficit Reduction Act (Public Law 98-369) authorized the Internal Revenue Service to deduct debts owed to the United States from the tax refund checks it sends out each year. This new authority is expected to greatly improve the government's debt collection efforts.

While new tools are available to the Government to improve its collection efforts, the final step in the collection process—litigation—is not being used often enough, nor are post-judgment actions pursued aggressively.

The Department of Justice is generally responsible for conducting the government's litigation, and agencies are required to refer litigable claims of $600 or more, including federal debt collection cases, to the Department of Justice for legal action. Sections 516, 518(b), 519 and 547(2) of title 28, United States Code, provide the Department of Justice with the sole authority to litigate Government claims.

Therefore, federal departments and agencies, including the Department of Education, the Small Business Administration, the Department of Housing and Urban Development, and others rely on the Department of Justice to sue those who refuse to repay their loans or other debts to the Government. The Department, through its U.S. Attorney offices around the country, is responsible for handling this substantial debt caseload, however, its staff and resources are limited and must be committed to higher priority responsibilities such as civil cases involving significant constitutional issues, cases involving large sums of money, violent crimes, and narcotics trafficking cases.

There were 92,978 delinquent debt cases pending at the Department of Justice as of July 31, 1985, in addition to the 210,557 other civil and criminal cases and other matters. Of the debt collection cases, 16,581 (18%) were over 4 years old. These cases were in various stages of action, but, in many, no legal action had been initiated. In fact, in 1985, the Department of Justice instituted fewer than 75,000 suits of any nature in which the U.S. Government was the party plaintiff. In those debt collection cases where judgment had been obtained, often no post judgment enforcement action was pursued to return these deliquent funds to the Treasury.

The caseload referred from the Department of Education, which has one of the largest portfolios of individual accounts in default, illustrates the Department of Justice's debt collection case backlog. The Justice Department reported that as of July 31, 1985, 25,344 cases totaling $79,434,922 in delinquent debts referred from the Department of Education were pending. As of July 31, 1985, the Department of Justice had terminated only 4,390 debt collection cases and only $4,484,364 was recovered in cash and non-cash collections.

In addition to the debt collection caseload pending at the Department of Justice, hundreds of thousands of delinquent claims that should be litigated are being held in the loaning agencies. The Department of Education, only one agency, estimated that there may be up to one million additional student loan default claims needing litigation. Similar situations exist with respect to debts referred from other federal agencies.

Caseload/Department of Justice

Pending as of July 31, 1985:	
Criminal cases and matters	79,878
Civil cases	97,852
Criminal fine/penalty cases	27,117
Tort claims/civil penalties	5,710

Civil debt collection cases ($1.9 billion owed)	92,978
Total cases	303,535
Debt cases terminated as of July 31, 1985 (includng 4,390 Department of Education	21,306

CIVIL DEBT CASES PENDING AT JUSTICE AS OF JULY 31, 1985

[By Agency]

Agency	Number of cases	Amount owed
Agriculture	12,065	$697,818,875
Defense	1,405	14,077,483
Education	25,344	79,434,922
HHS	1,506	26,944,065
HUD	4,119	177,846,246
IRS	3,192	74,038,335
SBA	8,807	478,198,315
VA	26,725	101,915,971
(Other)	9,815	210,213,254
Total	92,978	1,860,487,466

III. Legislative History

Measures similar to S. 209, the Federal Debt Recovery Act of 1985, were introduced in the 98th Congress by Senators Percy and D'Amato. The Subcommittee on Energy, Nuclear Proliferation, and Government Processes held an oversight hearing on May 25, 1983 to examine the litigation efforts of the Department of Justice in debt collection cases. A second legislative hearing was held on July 21, 1983 on S. 1356, legislation which authorized loaning agencies to contract with private counsel for legal services in connection with debt collection litigation. As a result of negotiations with the Department of Justice, S. 1668 was introduced on July 21, 1983 to authorize the retention of private counsel by the Attorney General while maintaining the flow of claims of indebtedness from the loaning agency to private counsel.

The Committee on Governmental Affairs considered S. 1668 and ordered the bill to be reported by a vote of 15 to 0 on August 1, 1983. On July 25, 1984, S. 1668 passed the Senate by a vote of 96 to 1. However, the House of Representatives did not complete action on S. 1668 or the companion House bill prior to adjournment of the 98th Congress.

S. 209 was introduced on January 21, 1985 by Senator d'Amato. In September, the Attorney General submitted a series of eight bills comprising the Administration's Anti-Fraud Enforcement Initiative, one of which was the Debt Collection Act Amendments of 1985, a bill similar to S. 209. Senators Roth and Cochran introduced the administration bill, S. 1658, by request on September 18.

On September 26, 1985, the Subcommittee on Energy, Nuclear Proliferation, and Government Processes held a hearing on S. 209 and S. 1658. Testimony was received from the following witnesses: Senator Alfonse M. D'Amato; Representative Jim Moody; Robert N. Ford, Deputy Assistant Attorney General, Office of Consumer Litigation, Department of Justice; Richard A. Hastings, Director, Debt Collection and Management Assistance Service, Department of

Education; William G. Broaddus, Attorney General, State of Virginia; Perry Michael, First Assistant Attorney General, State of Georgia; Dr. Dolores Cross, President, New York State Higher Education Services Corporation; William L. Guice, III, Rushing and Guice; Joel Nussbaum, Hayt, Hayt & Landau; Frank W. Koger, Past President, Commercial Law League; Richard Horn, Chairman, Payco American Corporation; G.L. Dawson, Vice President, G.C. Services Corporation; Carleton W. Fish and William H. Hearne, Dun and Bradstreet Government Services.

Officials of the Department of Justice and the Department of Education registered the Administration's support for the legislation. The state government witnesses described their successful experiences contracting with private attorneys to litigate debt cases and offered suggestions on the procedures that should be utilized and the specific terms that should be included in any contract. Attorney General Broaddus of the State of Virginia recommended that the U.S. Attorney General retain by contract the right to audit the accounts and records of the private attorneys retained. These witnesses also recommended that the law firms be evaluated and assigned new accounts on the basis of performance.

The private attorneys and representatives of the collection agencies also testified in support of the legislation. Witnesses representing private attorneys and firms active in debt litigation described the expertise and skills needed in effective collections litigation. They underscored the capability of small local firms to handle large volumes of debt cases. The collection agency representatives expressed their concern that the government continue to contract with collection agencies for services and suggested that provisions be made for referring claims directly from collection agencies to private counsel retained by the Department of Justice.

Written statements for the record in support of the legislation were received from Frank Uhlman, President, Dun and Bradstreet Commercial Collections; and H. William Allen, Chairman, National Conference Groups, and Joseph Patchan, Chairman, National Conference on Lawyers and Collection Agencies, American Bar Association. Comments on the legislation were also received from the General Accounting Office.

IV. Committee Views

The Committee has concluded that the case for using private counsel is a compelling one. The authority to contract with private counsel to provide legal services in delinquent debt cases will enable the Department of Justice to reduce its backlog of pending cases and handle expeditiously the hundreds of thousands of new cases which have yet to be referred by the loaning agencies.

The use of private counsel will also enable the Government to pursue litigation in cases under $600. Such cases by policy are not referred to the department of Justice since litigation of them is not considered to be cost effective. Private attorneys, however, testified that they handle such small dollar claims regularly and profitably collect on them.

This legislation will also make available to the Government the services of attorneys who have demonstrated competency, experi-

ence and reliability in the handling of collection accounts in the geographical area where the debtor is located. Private counsel have extensive experience with post-judgment remedies and process and have the financial motivation to vigorously pursue collection of the debt.

Collection agencies have been hampered by their inability to threaten debtors with legal suits because, realistically, few cases culminate in legal action. With enactment of this legislation, collection agencies will be able, where appropriate, to advise debtors that litigation is a likely consequence for the failure to pay. Once debtors are aware that the Government is intent on litigating to the fullest to recover money owed it, they can be expected to respond to persuasive collection efforts.

The Committee recognizes that significant steps have been take at the Department of Justice to improve its collection efforts. In the hearing held before the Governmental Affairs Subcommittee on Energy, Nuclear Proliferation, and Government Processes on September 26, 1985, Deputy Assistant Attorney General Robert Ford stated that the Department had placed increased emphasis on debt collection, citing a 1984 radio address in which President Reagan affirmed the Administration's commitment to recovering money owed to the government by stating:

> * * * with support from the Congress, we're taking a tough new stance on collections. We're not singling out any individuals or groups, but we can, we must and we will go after the cheaters who profit from the system at the expense of honest citizens * * * who live by the rules.

Ford also reported, that since 1982, $1.2 billion in cash, not including forfeitures and foreclosures, had been collected. Additionally, the Department had added 100 permanent, full time positions and 60 temporary positions devoted to debt collection in the U.S. Attorney's offices, conducted several week-long training conferences for collections personnel, and held training sessions for representatives from the client agencies to enable them to better report the debtor information needed for litigation. Implementation of a lockbox system for direct deposit of the funds collected had resulted in making dollars available to the Treasury sooner and providing timely data on collections for each agency on each debt sent for litigation.

Mr. Ford testified that U.S. Attorneys have been encouraged to file large groups of collection cases simultaneously to generate media coverage that will let the public know that the Government is serious about collecting delinquent debts. While this has met with success in a few judicial districts, in others, the Department of Justice has not been able to institute suits in the volume which could have its greatest impact on recalcitrant debtors.

While the Committee recognizes the Department's actions, much more needs to be done. Without immediate and aggressive action billions more in dollars owed to the Government will remain uncollected.

Testifying before the Subcommittee on May 25, 1983, then Assistant Attorney General Paul J. McGrath stated,

> Short of enormously increasing the size of the U.S. Attorneys' offices, the only viable solution is to retain private firms to handle the overflow of this massive influx of cases * * *

The Committee agrees with Mr. McGrath's assessment.

S. 209 provides the authority needed by the Attorney General to contract for the services of private counsel. The Committee intends that the Department of Justice will implement this legislation in such a way as to promote the most efficient and business-like debt recovery operation.

An important feature of this legislation is its provision for the payment of attorney fees out of the proceeds of the collections made by that attorney. This provision is identical to provisions in Public Law 97-365 and Public Law 98-167 under which all government agencies and departments, including the Department of Justice, may pay debt collection contractors from the collection proceeds. Therefore, the bill requires no appropriation from the Treasury but instead will increase federal revenues.

It is anticipated that this fee will be a percentage of the amount successfully collected—a contingency fee. In some cases the debt instrument may even require the payment of attorney fees, enabling attorneys to collect their compensation along with the debt at no expense to the federal government.

Based on hearings held in the Committee, there appear to be two strategies used by creditors for referring their debt claims to attorneys. Some creditors have a list of private counsel at their disposal and refer claims to them based on their experience with the firms. Other creditors refer all of their claims to one firm in each metropolitan area, or to one national firm which has offices throughout the country. While S. 209 does not direct the Department of Justice in this regard, the Committee expects the Department to choose its private counsel based on the method, in its judgment, that will result in the greatest net return based on carefully developed criteria and procedures that should specify the method for selecting the attorneys and the considerations to be made in evaluating their collection capability.

The Committee found that there has been a tendency among some government agencies to select contractors only on the basis of the lowest contingency fee. While authorized by S. 209, such practices are not always in the best interests of the Government or the taxpayers. The most important consideration in debt collection contracting should not be the contingency fee percentage, but rather, the net amount of dollars returned to the Government.

The experience, skills, reputation, and resources of the competing contractors must also be considered to insure that maximum collection efforts will be undertaken. The Committee expects that the Department will retain firms with debt collection experience, a trained collections staff, and the capability to handle a large volume of cases, which may require automated litigation support. The reputation of the law firm for responsible practices in the collection of consumer and commercial debts must also be considered. Attorneys selected should meet the highest ethical standards and be members in good standing in the state bar. The Committee

would expect the Department to contact the American Bar Association, the Commercial Law League, and state and local bar associations, as well as creditors who have used law firms, to determine their reliability, recovery rates, and performance. Counsel retained under this Act will be subject to the requirements of the Fair Debt Collection Practices Act as a debt contractor.

Other provisions are contained in the legislation to ensure competition. This bill requires the Attorney General to use his best efforts to retain more than one counsel in a judicial district where such services will be utilized. The fee established for such legal services shall be a reasonable one and may not exceed the rate typically charged for a similar service in the area where the private counsel is engaged in practice. Factors to be taken into account in determining whether a fee is reasonable include the amount, age, and nature of the indebtedness, rates typically charged for similar services, and whether the debtor is an individual or a business entity.

Even though the selection of attorneys to perform professional services involves subjective judgments, under S. 209, contracts entered into between the Attorney General and private counsel would be governed by federal procurement statutes and be subject to judicial review. Criteria and guidelines for selection, if carefully developed and adhered to, will provide a workable standard to guide a court if called upon to review such a decision.

The Attorney General should use his best efforts to ensure that interested firms, including small local firms and minority firms, will have full opportunity to compete or be considered for these legal service contracts by widely advertising its intentions to retain private firms, including notification to state and local bar associations, minority bar associations, and other such groups.

The Committee expects that the Attorney General will implement the bill by entering into contracts with law firms to handle selected classes of cases in selected districts, e.g., all student loan cases in the Southern District of Florida. Alternatively, the contract might provide that the law firm handle a fixed number of cases within a certain class, with any overflow to be handled directly by the U.S. Attorney's office. The contracts would, by their terms, limit the authority of the law firm to handle only those cases identified in the contract.

The Attorney General will have ultimate authority to oversee all case referrals. Paragraph (b)(2) was modified at the request of the Department of Justice to clarify that case referrals by a federal agency to the private counsel shall be "subject to the approval of the Attorney General." This clause would be implemented by memoranda of understanding with the agencies and does not require the Department of Justice to review each case. The Committee expects the Department of Justice to expedite its review and approval of any individual case or class of cases.

In order to facilitate referrals, a federal agency may send its cases directly to private counsel that has been retained by the Department of Justice to handle such a case or class of cases. When claims of indebtedness are pending with a private collection agency under a contractual agreement, the federal agency head may direct those cases to be transferred from the collection agency to the ap-

proved private counsel. Such direct transferral of the case documentation and other information will facilitate timely litigation.

This legislation does not prohibit an executive or legislative agency from including in its contract with a private collection agency a provision authorizing a collection agency to transfer prior-approved claims of indebtedness to a private counsel which has been retained by the Department of Justice to take legal action on the particular case or class of cases.

Once legal action is indicated, the executive or legislative agency should promptly refer the claims of indebtedness to the private counsel retained by the Department of Justice.

The authority to refer cases directly to private counsel, subject to the approval of the Attorney General, is not intended to imply that federal agencies should bypass the use of private collection agencies as provided in Public Law 97-365. Government agencies should increasingly use private collection services, report delinquent debtors to credit reporting bureaus, charge interest, and other credit management tools. Litigation should be used as a final collection tool after other attempts to collect have failed. All collection activity, from start to finish, must be pursued promptly.

V. Section-by-Section Analysis

SECTION 1

Section 1 entitles the act the "Federal Debt Recovery Act of 1985."

SECTION 2

Section 2 of the bill amends Section 3718 of Title 31 to add new subsections (b) and (c) that will authorize the Attorney General to contract with private counsel for legal services in delinquent debt cases. This authority is applicable to non-tax cases only, and S. 209 has been amended to clarify this point.

Paragraph (b)(1) authorizes the Attorney General to enter into contracts with private counsel for legal services, including litigation, in connection with debt collection cases. Such contracts shall contain such terms as the Attorney General deems appropriate, including the amount of or method for calculating the fee paid. The Attorney General must use best efforts to retain more than one private counsel in a judicial district, and fees may not exceed the rate typically charged in the area.

Paragraph (b)(2) permits the federal creditor agency to refer cases within the terms of the contract directly to the law firms approved by the Department of Justice in order to ensure that cases are promptly referred to private sector counsel.

Paragraph (b)(3) clarifies that notwithstanding the sections of the United States Code which currently restrict the contracting or litigation by the Federal Government, private counsel retained under subparagraph (b)(1) may represent the United States in litigation in connection with debt collection services.

Subparagraph (b)(4)(A) provides the Attorney General with the authority to terminate a contract with a private counsel when he determines that termination is "for the convenience of the govern-

ment." At the request of the Department of Justice, this section was amended to adopt this language in lieu of "in the public interest," since it was pointed out that this is the standard used in other federal contracts.

Subparagraph (b)(4)(B) also permits the Attorney General to withdraw a claim and litigate directly when he determines such action to be in the public interest.

Under *subparagraph (b)(4)(C)*, the head of the federal agency referring the claim is permitted to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action.

Subparagraph (b)(4)(D) will require private counsel to report periodically on the progress made with the assigned debt cases. S. 209 originally provided for monthly reporting. However, in consultation with the Department, periodic reporting was deemed to be more reasonable.

In addition, *paragraph (b)(5)* requires that, nonwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), private counsel performing collection services pursuant to a contract made under this bill shall be considered a debt contractor.

Paragraph (c)(1) requires the Attorney General to transmit annually to the Congress a report on the activities of the Department and private counsel in recovering debts. The report should (1) include the total number and amount of claims of indebtedness for each executive or legislative agency, (2) separately specify any uncollected indebtedness which was covered by a contract terminated by the Attorney General, and (3) describe the progress made by the Department of Justice in collecting claims of indebtedness during the period covered by the report. The report should contain, in clear and understandable language, the number of claims (including their dollar amount) that are on hand at the Department and with the contractors and the amount that has been collected by the contractors and the Department.

Paragraph (c)(2) requires the General Accounting Office to conduct an annual audit of the actions taken by the Attorney General under this section, including an evaluation of the extent to which there is competition among private counsel to obtain the contracts, the reasonableness of fees, the diligence of the Attorney General in retaining counsel, and the results of the debt collection efforts of private counsel so retained. The General Accounting Office is to transmit its report directly to the Congress.

SECTION 3

Section 3 of the bill requires the Attorney General to transmit to the Congress within 180 days an initial report on the action taken pursuant to the enactment of this authority. The bill originally required such report to be made within 60 days but 60 days was determined to be an insufficient amount of time to undertake implementation of the legislation.

VI. Committee Vote

The Committee favorably reported S. 209 by voice vote on November 19, 1985. No opposition to the bill was registered by any member.

VII. Evaluation of Regulatory Impact

Paragraph II(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact which would be incurred in carrying out the bill.

S. 209 is intended to increase the efficiency and effectiveness of Federal debt collection efforts by allowing Federal agencies to use private sector attorneys. This step will result in a significant increase in the collection of government debts. The bill does not impose additional forms of regulation on private counsel, other than those necessary in bidding on government contracts. Although Federal agencies will need to establish procedures in order to implement the provisions of S. 209, any associated cost will be more than offset by the increased collections generated.

The bill will impose regulatory and paperwork requirements on those private sector attorneys who choose to bid on these contracts. It will require them to submit a proposal in accordance with the requirements of the Department of Justice. The bill states that private counsel shall transmit periodically a claim or report to the Attorney General and the head of the executive or legislative agency on the services relating to such claim rendered under the contract and the progress made during that period in collecting such claim.

VIII. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 4, 1986.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 209, the Federal Debt Recovery Act of 1985, as ordered reported by the Senate Committee on Governmental Affairs, November 19, 1985.

The bill authorizes the Attorney General to contract with private attorneys for collection services. Counsel retained under this provision will be authorized to represent the federal government in litigation. (Under current law, federal agencies may contract with private collection agencies, but litigation must be carried out by federal employees.) Attorneys working under contract will be paid on a contingency basis, receiving a percentage of collections.

Based on information from the Department of Justice, it is anticipated that only cases not currently litigated will be turned over to private attorneys. Thus, any increase in collections will result in increased receipts to the federal government. However, because the extent to which this provision will be used is uncertain, the potential amount of receipts cannot be estimated.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 31—MONEY AND FINANCE

* * * * * * *

Subtitle III—Financial Management

* * * * * * *

CHAPTER 37—CLAIMS

* * * * * * *

Subchapter II—Claims of the United States Government

* * * * * * *

§ 3718. Contracts for collection services

(a) Under conditions the head of an executive or legislative agency considers appropriate, the head of the agency may make a contract with a person for collection services to recover indebtedness owed the United States Government. The contract shall provide that—

(1) the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5, to the extend provided in section 552a(m); and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(b)(1) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. If the Attorney General makes a contract for legal services to be furnished in any judi-

cial district of the United States under the first sentence, the Attorney General shall use his best efforts to retain, from among attorneys regularly engaged in the private practice of law in such district, more than one private counsel to furnish such legal services in such district. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of indebtedness and whether the debtor is an individual or a business entity.

(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

(3) Notwithstanding sections of 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

(4) A contract made with a private counsel under paragraph (1) of this subsection shall include—

(A) a provision permitting the Attorney General to terminate the contract if the Attorney General determines that the termination of the contract is for the convenience of the Government;

(B) a provision permitting the Attorney General to have any claim referred under the contract returned to the Attorney General if the Attorney General finds such action to be in the public interest;

(C) a provision permitting the head of any executive or legislative agency which refers a claim under the contract to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

(D) a provision requiring the private counsel to transmit periodically to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the period for which the report is made and the progress made during such period in collecting the claim under the contract.

(5) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered a debt collector for the purposes of such Act.

(c)(1) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice or to a private counsel for collection. Each

such report shall include a list, by agency, of the total number and amounts of collected and uncollected claims of indebtedness which were referred to the Department of Justice or to a private counsel for collection, shall separately specify any uncollected claim of indebtedness which was covered by a contract (A) which was terminated by the Attorney General under subsection (b)(4)(A) of this section or (B) under which the claim was returned to the Attorney General under subsection (b)(4)(B) of this section, and shall describe the progress made by the Department of Justice in collecting uncollected claims of indebtedness during the one-year period covered by the report.

(2)(A) The Comptroller General of the United States shall carry out an annual audit of the actions taken by the Attorney General under subsection (b) of this section during the preceding twelve months. The Comptroller General shall determine the extent to which there is competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain counsel in accordance with the provisions of this section, and the results of the debt collection efforts of private counsel retained under such contracts.

(B) After completing each audit under subparagraph (A), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.

[(b)] (*d*) Notwithstanding section 3302(b) of this title, a contract under subsection (a) *or (b)* of this section may provide that a fee a person charges to recover indebtedness owed the United States Government is payable from the amount recovered.

[(c)] (*e*) A contract under subsection (a) *or (b)* of this section is effective only to the extent and in the amount provided in an appropriation law. This limitation does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsection [(b)] (*d*) of this section.

[(d)] (*f*) This section does not apply to the collection of debts under the Internal Revenue Code of 1954.

APPENDIX

DEBT COLLECTION ACTIVITY—DELINQUENT AMOUNTS

[In millions of dollars]

Agency/Department	Fiscal year 1984	As of Sept. 30, 1985
Agriculture	6,235	9,197
AID	252	282
Commerce	354	516
Defense	685	1,030
Education	3,976	3,945
Energy	38	68
HHS	623	479
HUD	1,715	1,576
Interior	183	280
Justice	27	39
Labor	343	372
SBA	2,644	2,519
Transportation	350	620
VA	1,415	1,555
Export-Import Bank	919	971
All other activities	111	157
Total	19,870	23,606

Debt owed the Federal Government as of Oct. 1, 1984

	Billions
Total debt owed Federal Government	$315.3
Tax	53.2
Non-tax	262.1
Overdue debt	49.6
Tax	29.7
Non-tax	19.9
Less than 1 year overdue	29.0
Tax	21.4
Non-tax	7.6
More than 1 year overdue	26.6
Tax	8.3
Non-tax	12.3
More than 6 years overdue	?
Tax	?
Non-tax	6.2
	Millions
Written off in fiscal year 1984	$364
Government borrowing rate (percent)	10.7

Daily/annual statistics on delinquent debt

	Millions/Day
Moneys lost to the statute limitations	$6.7
Increased Government borrowing costs	5.8
Lost interest (at rate of 4 percent)	2.2
Total	14.7
	Billions/Year
Total moneys lost to Government	$5.37

○

Calendar No. 555

99TH CONGRESS
2d Session

SENATE

REPORT
99-257

PRESIDENTIAL LIBRARY ACT OF 1985

MARCH 7 (legislative day, FEBRUARY 24), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 1349]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 1349) to reduce the costs of operating Presidential libraries, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. NEED FOR LEGISLATION

The laws providing benefits to our Nation's former Presidents have developed piecemeal and with little regard to their overall impact. While each statute was conceived with a sound purpose in mind, the passage of some twenty to thirty years since their enactment and the failure of Congress to evaluate these programs comprehensively have resulted in overall benefit levels far exceeding original expectations, both in terms of the amounts and the purposes for which funds are spent.

The Presidential Libraries Act of 1955 fits this characterization. While private parties finance the establishment of Presidential li-

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braries, the federal government operates and maintains them in perpetuity. The cost of libraries has grown from $63,745 in 1955 to an estimated $15,734,000 in 1985. During hearings on the Library Act in 1955, it was estimated that each additional library would generate a requirement of $100,000 annually for operation and maintenance. With seven operational libraries now in existence that cost approximates $2 million per year per library. The cost growth has been so extensive it cannot be attributed solely to the addition of new facilities.

Legislation amending the Presidential Libraries Act is needed to reduce the taxpayer costs associated with Presidential libraries and to strengthen the role to be played by the Archivist of the United States in preserving, protecting, and sharing our nation's heritage. The Archivist needs to be able to assure reasonable standards and controls upon the establishment of new Presidential libraries. Therefore, one purpose of this legislation is to strengthen the Archivist's ability to assure that the building, equipment, and other facilities comply with minimum standards. These standards will be presented by the Archivist and will relate to suitability for use for archival purposes. The statutory limitation of a single facility not to exceed 70,000 square feet before an additional endowment is required should enable the Archivist to assure a reasonable facility is dedicated for a Presidential library.

Finally, legislation like this is also needed to ensure that establishing Presidential libraries is well coordinated, that their operation is more cost effective, and that the libraries are subject to some carefully defined limits. Presidential libraries must be subject to strong cost discipline and effective controls. This illustrates a second purpose of this bill and that is to establish a new mechanism for funding the ongoing operational costs of future Presidential libraries. The endowment requirements put forth will reduce the taxpayer cost of operating future Presidential libraries. As noted in the House Committee Report to this legislation (H. Rpt. 99–125), had the provisions of the bill been in effect since the inception of the Presidential library system, the expenditure of appropriated funds might have been reduced in fiscal year 1984 from $15 million to less than $8 million, if one were to discount the effects of inflation.

II. Summary

The "Presidential Libraries Act of 1986" establishes the Archivist of the United States as responsible for managing Presidential libraries. The Archivist is to create architectural and design standards for the construction of Presidential libraries by private parties. The standards apply to any facility erected or modified after the date this Act becomes law. The archivist may accept—as private gifts or pursuant to agreements with state and local governments, institutes, or foundations—land, facilities and equipment as are needed to operate and maintain a Presidential library.

The Act prohibits the Archivist from making any agreement for a Presidental library unless he determines an endowment equal to 20 percent of the total cost of the facility is provided. Income from

the endowment will be earmarked and used to help pay for the operating and maintenance costs of the library.

The bill also requires all new libraries to be in a single facility whose size shall be limited to 70,000 square feet, unless additional endowment requirements are met to pay for operating and maintenance costs associated with space beyond the limit. The requirements for the endowment and space of a Presidential library apply to Presidents elected after January 20, 1985.

The Act requires the Archivist to submit a library prospectus to Congress for a 60-day review period before he may act to accept responsibility to operate and maintain a library. The submission must include an estimate of all federal costs associated with the library and an estimate of the annual cost to the government for operation and maintenance.

The Act also requires all modifications to libraries be subject to similar Congressional review requirements.

The bill mandates that endowments be established in the National Archives Trust Fund for each of the existing Presidential libraries not subject to the 20 percent endowment requirement.

The bill also clarifies the authority of the Archivist to solicit, as well as accept and receive, gifts or bequests.

The Act mandates a feasibility study by the Archivist for establishing a museum of Presidents.

III. Legislative History

On October 2, 1985, the Committee on Governmental Affairs ordered H.R. 1349 to be reported favorably with an amendment in the nature of a substitute. The substitute amendment embodied Title I of S. 1047, the Former Presidents Facilities and Services Reform Act of 1985.

S. 1047 consists of three titles, relating to Presidential libraries, office staff and allowances, and secret service protection. Title I concerns Presidential libraries.

The 99th Congress is the fourth Congress in which legislation similar to S. 1047 has been introduced. The bill is sponsored by Senator Chiles and cosponsored by 19 other Senators, including the Chairman of the Committee on Governmental Affairs, Senator Roth. The other Senators are: Pryor, Kassebaum, Burdick, Cohen, Hollings, DeConcini, Sasser, Exon, Nickles, Lugar, Boren, Proxmire, D'Amato, Grassley, Goldwater, Zorinsky, Durenberger, and Boschwitz.

In the 98th Congress, S. 563, the predecessor to S. 1047 was reported to the Senate by the Committee on Governmental Affairs but was not considered by the full Senate. The Committee Report on S. 563, Senate Report 98-637, discusses further the legislative history in previous Congresses associated with Title I of S. 1047.

H.R. 1349 was reported to the full House by the House Committee on Government Operations on May 15, 1985. (House Report 99-125). On June 4, 1985 the House passed H.R. 1349 by voice vote. On June 6, the bill was referred to the Senate Committee on Governmental Affairs.

H.R. 1349 is similar to a bill passed by the House in the 98th Congress, H.R. 5584. (House Report 98-856).

The bill reported by the Committee on Governmental Affairs represents the work of both the House and Senate Committees over several Congresses. The bill reported by the Committee on Governmental Affairs is similar to the bill passed by the House with one substantive exception. The bill amended by the Senate Committee now contains the limitation that Presidential libraries not exceed 70,000 square feet unless additional endowment requirements are met.

IV. Section-By-Section Analysis

Section 2 amends the definition of "Presidential archival depository" contained in the first paragraph of Section 2101 of Title 44 of the United States Code. The language "and may include research facilities and museum facilities in accordance with this chapter" is added to the existing definition to make clear that research and museum facilities may be considered as part of a Presidential library.

Section 3 amends Section 2112(a) of Title 44 of the United States Code, which is the codification of the Presidential Libraries Act as amended.

When the Archivist considers it to be in the public interest, the Archivist may accept, for and in the name of the United States, land, a facility, and equipment offered as a gift to the United States for the purposes of creating a Presidential library.

The Archivist may take title to the land, facility, and equipment on behalf of the United States, and may maintain, operate, and protect them as a Presidential library within the national archives system.

The Archivist may make agreements, as opposed to accepting transfer to title, upon terms consistent with the requirements of this section and which the Archivist considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use land, buildings, and equipment made available by them to operate as a Presidential library.

The Archivist may also maintain, operate, and protect the library as a part of the national archives system, and accept, for and in the name of the United States, gifts offered for the purpose of making any physical or material changes or addition to a Presidential library.

The Archivist will set forth architectural and design standards applicable to Presidential libraries in order to ensure that such libraries: (1) preserve Presidential records subject to Chapter 22 of Title 44 and papers and other historical materials accepted for deposit under Section 2111 of Title 44 and; (2) contain adequate research facilities.

The terms "architectural" and "design" standards are not intended to imply the Archivist will rigidly set forth what a library facility will look like. They are intended to mean the Archivist will establish functional requirements for an archival depository and museum. The facade of a facility, for example, would not be dictated by the standards to be promulgated by the Archivist.

Prior to accepting title or entering into any agreements for the establishment of a Presidential library, the Archivist is required to

submit a written report on the proposed Presidential archival depository to the President of the Senate and the Speaker of the House of Representatives. The report must include:

1. A description of the land, facility and equipment offered as a gift or to be made available without transfer of title.

2. A statement specifying the estimated total cost of the proposed library and the amount of the endowment required for the library.

3. A statement of the terms of the proposed agreement, if any.

4. A general description of the types of papers, documents, or other historical materials proposed to be deposited in the Presidential library, and the terms of the proposed deposit.

5. A statement of any additional improvements and equipment associated with the development and operation of the library, an estimate of the costs of the improvements and equipment, and a statement of the costs to be incurred by any federal or state government agency. This provision is intended, among other things, to enable the Congress to identify and evaluate all federal funds, including funds spent by agencies of the government other than the National Archives, associated with the development and operation of the proposed library facility.

6. An estimate of the total annual cost to the United States of maintaining, operating, and protecting the library.

7. A certification that such facility and equipment (whether offered as a gift or made available without transfer of title) comply with standards promulgated by the Archivist.

Before accepting any gift for the purpose of making any physical or material change or addition to a Presidential archival depository, the Archivist will submit a report in writing on the proposed change or addition to the President of the Senate and the Speaker of the House of Representatives. The report will include:

1. A description of the gift.

2. A statement specifying the estimated total cost of the proposed physical or material change or addition and the amount of the deposit in an endowment for the library in order to meet the cost of the change or addition.

3. A statement of the purpose of the proposed change or addition and a general discription of any papers, documents, or historical materials proposed to be deposited in the library as a result of the change or addition.

4. A statement of any additional improvements or equipment for the library associated with the change or addition.

5. An estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the library that will result from the change or addition.

6. A certification that the library and the equipment, after the change or addition, comply with the standards promulgated by the Archivist.

The Archivist may not: accept or take title to land, a facility, or equipment; enter into any agreement or any other agreement to accept or establish a Presidential library; or accept any gift in order to make any physical or material change to a Presidential library until 60 calendar days of continuous session of the Congress have expired since the date the report was submitted.

The term "continuous session of Congress" is to be interpreted as follows: "Neither the days following a sine die adjournment nor the days on which either House is not in session because of adjournment of more than three days to a day certain count in computing the 60 continuous days."

The 60-day period is intended to enable Congress to hold hearings or otherwise review and examine the prospectus. The Archivist is authorized to proceed as described in the prospectus after the 60-day period has expired. The Congress may take separate legislative action to express its approval or disapproval of a proposed Presidential library during this period. Expiration of the review period is not to be interpreted to permit the Archivist to take title or make agreements for the purposes of a library facility which is different or changed from that described in the prospectus. If the arrangements of the library are to be different from that described in the required prospectus, then a new or amended prospectus would be required and a new 60-day period would have to expire before the Archivist could proceed.

Section 3(b) of the bill amends Section 2112(g) of Title 44, United States Code, which is codification of the Presidential Libraries Act as amended.

When the Archivist considers it to be in the public interest, the Archivist may solicit and accept gifts or bequests of property and money for the purpose of maintaining, operating, protecting, or improving a Presidential library.

The proceeds of gifts or bequests, together with the proceeds from fees from sales of historical materials, copies or reproductions, catalogs, or other items, having to do with a Presidential archival depository, will be paid into an account in the National Archives Trust Fund and applied toward facility operations costs or improvement of the respective Presidential library.

The Archivist will establish a Trust Fund of separate endowments for the maintenance of the land, facility, and equipment of each Presidential library. This Trust Fund will be credited with any gifts or bequests that are offered for the purpose of maintaining the land, facility, and equipment of each Presidential library. Income to each endowment will be available to cover facility operations costs but will not be available for the performance of archival functions under this title.

Income to the endowments may not be used to cover the costs identified by the National Archives and Records Administration as "program costs." These costs include the values and expenses of the Archives personnel employed at the Presidential libraries and the costs of cataloging, preserving, reproducing, restoring, and exhibiting the Presidential and other records and materials in the care and custody of the Presidential library. The term "cost of facility operations" is intended to include the terminology employed by the National Archives and Records Administration, operation and maintenance costs, protection costs, actual costs and common distributables. The intent, consistent with that of the House (See H. Rept. 99-925, p. 11), is that income from the endowments is to be applied to functions beyond the "core" archival responsibilities. The basic responsibility to preserve and care for Presidential records is a government responsibility.

The Archivist shall not accept or take title to any land, facility, or equipment, or enter into any agreement to use any land, facility, or equipment, to create a Presidential library unless the Archivist determines an endowment equal to at least 20 percent of both (A) the total cost of acquiring and constructing the library facility and related equipment, and (B) the total cost of acquiring (or such other measure of value as is mutually agreed upon by the Archivist and the donor) the land on which the facility is situated if title to the land is to be vested in the United States or the cost to the donor of any (other than facility or equipment) improvements to the land on which the facility is situated if title is not vested.

If the library facility exceeds 70,000 square feet in area, the Archivist must determine that a proportionately greater endowment be available for any space which exceeds 70,000 square feet. The additional endowment amount is to be determined as follows: The product of the total cost of acquiring and constructing the facility plus the total cost of acquiring or improving the land upon which the facility is located, multiplied by the percentage obtained by dividing the number of square feet exceeding 70,000.

The purpose of the additional endowment requirement is effectively to eliminate added taxpayer costs that would be associated with the operation and maintenance of space exceeding 70,000 square feet. A facility of 70,000 square feet is adequate for a Presidential library. While larger facilities are not precluded, an additional endowment would be necessary.

Additional endowment requirements are also imposed if a proposed change or addition to a Presidential library would result in an increase in the costs of facility operations. The Archivist may not accept any gifts or implement any provisions of law to make such a change or addition unless the Archivist determines there is available an additional amount for deposit in the respective endowment to help cover the additional costs. The additional amount shall be equal to the difference between the amount which would have been required for deposit in the initial endowment if the change or addition had been included as part of the facility, or the date the Archivist took title or entered into an agreement in order to establish the library and the amount which was actually required.

Section 4 explains the applicability of the bill's provisions. The endowment requirements and other amendments made by Section 3(b) of the bill shall apply to any Presidential library pertaining to any President who takes the oath of office as President for the first time on or after January 20, 1985.

The provisions of Section 3(a) of the bill, including the authority to promulgate minimum standards for Presidential libraries and the authority to solicit gifts or bequests, shall take effect upon enactment.

Section 5 requires the Archivist, in consultation with the Secretary of the Smithsonian Institution and the National Capital Planning Commission, to determine the demand, space, program, and cost requirements of a museum of the Presidents.

Such a museum has been recommended by the National Capital Planning Commission [NCPC] in its comprehensive plan element titled, "Visitors to the Nation's Capital," adopted December 6,

1984. The comprehensive plan is a policy, planning, and land-use guide for the Nation's Capitol required by law.

The NCPC noted that there are inherent conflicts in use of the White House as a museum since it serves as part of the Executive Office of the President and as the President's private residence. The Commission recommended an expanded program and display to represent all 39 of the Nation's Presidents' tenure of office. Such a program would help resolve the problems in the present uses of the White House.

The feasibility of such an undertaking should be explored by the Archivist in cooperation with other affected agencies and individuals. The Secretary of the Smithsonian and other federal agencies shall cooperate with the Archivist. Such cooperation could include personnel and other assistance on a non-reimbursable basis if practicable.

The feasibility study shall explore a range of space, program, and cost options, including the establishment and operation of a museum of the Presidents in whole or in part with nonfederal funds.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of H.R. 1349 as well as the impact of the bill on personal privacy.

As a result of the bill there will be some regulatory impact on individuals or entities which intend to establish privately a library facility for a former President. They must be mindful of the architectural and design standards the Administrator of the General Services Administration is required to promulgate by the Act.

The Committee does not believe the legislation results in any major changes to the privacy of former Presidents, their families, or the public.

There will not be a major economic or regulatory impact on the public generally, or individuals or businesses.

VI. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 6, 1986.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1349, an act to reduce the cost of operating Presidential libraries, and for other purposes, as ordered reported by the Senate Committee on Governmental Affairs, October 2, 1985. We estimate that enactment of this legislation will have no immediate budget impact, but would result in some savings to the federal government in the 1990s and thereafter. The amount of savings cannot be estimated precisely.

Under current law, presidential libraries are built with private funds and then donated to the United States. The federal government pays for operation and maintenance of the libraries. The act provides for the establishment by gift or bequest of separate endowments in the National Archives Trust Fund for the purpose of maintaining future presidential libraries. The Archivist of the National Archives and Records Administration could not accept lands or buildings for a presidential library unless there were an amount available for endowment equal to at least 20 percent of the sum of the total cost of the building and the cost of acquiring the land (or the cost of improvements to the land if it is not donated to the United States). Endowments would also be required in conjunction with gifts for making changes to a library that would result in increased operations costs. Income from the endowments would be available for operations costs but not for archival functions. Therefore, the federal government would be responsible only for operation and maintenance costs of future presidential libraries that are not offset by income from the endowments. Currently, such costs average about $1 million annually for each of the seven libraries. This act applies only to Presidents who take the oath of office for the first time after January 20, 1985. Therefore, it is unlikely that any savings will be achieved until the 1990s.

The act would also require the Archivist, in consultation with the Smithsonian Institution and the National Capital Planning Commission, to study the demand for and the cost of establishing a museum of the Presidents. The study is not expected to result in significant additional costs.

Enactment of this legislation will not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

VII. ROLLCALL VOTE IN COMMITTEE

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during committee consideration of this legislation was as follows:

Stevens
Mathias
Cohen
Durenberger
Cochran
Eagleton
Chiles
Levin
Gore
Roth

VIII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

Chapter	Sec.
1. Joint Committee on Printing	101
3. Government Printing Office	301
5. Production and Procurement of Printing and Binding	501
7. Congressional Printing and Binding	701
9. Congressional Record	901
11. Executive and Judiciary Printing and Binding	1101
13. Particular Reports and Documents	1301
15. Federal Register and Code of Federal Regulations	1501
17. Distribution and Sale of Public Documents	1701
19. Depository Library Program	1901
21. National Archives and Records Administration	2102
22. Presidental Records	2201
23. National Archives Trust Fund Board	2301
25. National Historical Publications and Records Commission	2501
29. Records Management by Archivist of the United States and by the Administration of General Services	2901
31. Records Management by Federal Agencies	3101
33. Disposal of Records	3301
35. Coordination of Federal Reporting Services	3501
37. Advertisements by Government Agencies	3701

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CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.
2101. Definitions.
2102. Establishment.
2103. Officers.
2104. Administrative provisions.
2105. Personnel and services.
2106. Reports to Congress.
2107. Acceptance of records for historical preservation.
2108. Responsibility for custody, use, and withdrawal of records.
2109. Preservation, arrangement, duplication, exhibition of records.
2110. Servicing records.
2111. Material accepted for deposit.
2112. Presidental archival depository.
2113. Depository for agreements between States.
2114. Preservation of motion-picture films, still pictures, and sound recordings.
2115. Reports; correction of violations.
2116. Legal status of reproductions; official seal; fees for copies and reproductions.
2117. Limitation on liability.
2118. Records of Congress.

§ 2101. Definitions

As used in this chapter of title—

(1) "Presidental archival depository" means an institution operated by the United States to house and preserve the papers and books of a President or former President of the United States, together with other historical materials belonging to a President or former President of the United States, or related to his papers or to the events of his official or personal life, *and may include research facilities and museum facilities in accordance with this chapter;*

(2) * * *

* * * * * * *

§ 2112. Presidential archival depository

(a)*(1)* When the Archivist considers it to be in the public interest, *the Archivist* [he] may *(A)(i)* accept, for and in the name of the United States, land, *a facility* [buildings], and equipment offered as a gift to the United States for the purposes of creating a Presidential archival depository[, and]*; (ii)* take title to the land, [buildings] *facility,* and equipment on behalf of the United States; and *(iii)* maintain, operate, and protect [them] *the land, facility, and equipment* as a Presidential archival depository[,] and as part of the national archives system; [and] *(B)(i)* make agreements, upon terms and conditions [he] *the Archivist* considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, [buildings,] *a facility,* and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States; and *(ii)* maintain, operate, and protect the depository as a part of the national archives system[.]*; and*

(C) accept, for and in the name of the United States, gifts offered for the purpose of making any physical or material change or addition to a Presidential archival depository.

(2) The Archivist shall promulgate architectural and design standards applicable to Presidential archival depositories in order to ensure that such depositories (A) preserve Presidential records subject to chapter 22 of this title and papers and other historical materials accepted for deposit under section 2111 of this title and (B) contain adequate research facilities.

(3) Prior to accepting and taking title to any land, facility, or equipment under subparagraph (A) of paragraph (1), or prior to entering into any agreement under subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository, the [The] Archivist shall submit a report in writing on a proposed Presidential archival depository to the President of the Senate and the Speaker of the House of Representatives, and include—

(A) a description of the land, [buildings,] *facility,* and equipment offered as a gift or to be made available without transfer of title;

(B) a statement specifying the estimated total cost of the proposed depository and the amount of the endowment for the depository required pursuant to subsection (g) of this section;

(C) [(B)] a statement of the terms of the proposed agreement, if any;

(D) [(C)] a general description of the types of papers, documents, or other historical materials proposed to be deposited in the [Presidential archival] depository [so] to be created, and of the terms of the proposed deposit;

(E) [(D)] a statement of [the] *any* additional improvements and equipment[, if any, necessary to the satisfactory] *associated with the development and* operation of the depository, [together with an estimate of the cost] *an estimate of the costs of such improvements and equipment, and a statement as to the extent to which such costs will be incurred by any Federal or State government agency;* [and]

(F) [(E)] an estimate of the *total* annual cost to the United States of maintaining, operating, and protecting the depository[.] *; and*

(G) [(F)] *a certification that such facility and equipment (whether offered as a gift or made available without transfer of title) comply with standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.*

(4) Prior to accepting any gift under subparagraph (C) of paragraph (1) for the purpose of making any physical or material change or addition to a Presidential archival depository, or prior to implementing any provision of law requiring the making of such a change or addition, the Archivist shall submit a report in writing on the proposed change or addition to the President of the Senate and the Speaker of the House of Representatives. The report shall include—

(A) a description of such gift;

(B) a statement specifying the estimated total cost of the proposed physical or material change or addition and the amount of the deposit in an endowment for the depository required pursuant to subsection (g) of this section in order to meet the cost of such change or addition;

(C) a statement of the purpose of the proposed change or addition and a general description of any papers, documents, or historical materials proposed to be deposited in the depository as a result of such change or addition;

(D) a statement of any additional improvements or equipment for the depository associated with such change or addition;

(E) an estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the depository that will result from such change or addition;

(F) a certification that the depository, and the equipment therein will, after such change or addition, comply with the standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

[(3) The Archivist may not take title to land, buildings, and equipment or make an agreement, until the expiration of the first period of 60 calendar days of continuous session of the Congress following the date on which the report is transmitted, computed as follows:

Continuity of session is broken only by an adjournment sine die, but the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded.]

(5) The Archivist may not—

(A) accept or take title to land, a facility, or equipment under subparagraph (A) of paragraph (1) for the purpose of creating a Presidential archival depository;

(B) enter into any agreement under subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository; or

(C) accept any gift under subparagraph (C) of such paragraph for the purpose of making any physical or material change to a Presidential archival depository,

until the expiration of a period of 60 days of continuous session of Congress beginning on the date on which the Archivist transmits the report required under paragraph (3) of this subsection with respect to such Presidential archival depository or the report required under paragraph (4) of this subsection with respect to such change or addition, as the case may be.

(b) When the Archivist considers it to be in the public interest, he may deposit in a Presidential archival depository, papers, documents, or other historical materials accepted under section 2111 of this title, or Federal records appropriate for preservation.

(c) When the Archivist considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control. The Archivist, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical materials accepted and deposited under section 2111 of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or depositors, including the restriction that they shall be kept in Presidential archival depository. The restrictions shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf. Subject to the restrictions, the Archivist may dispose by sale, exchange, or otherwise, of papers, documents, or other materials which the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository. Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.

(d) When the Archivist considers it to be in the public interest, he may cooperate with and assist a university, institution of higher learning, institute, foundation, or other organization or qualified individual to further or to conduct study or research in historical materials deposited in a Presidential archival depository.

(e) When the Archivist considers it to be in the public interest, he may charge and collect reasonable fees for the privilege of visiting and reviewing exhibit rooms or museum space in a Presidential archival depository.

(f) When the Archivist considers it to be in the public interest, he may provide reasonable office space in a Presidential archival depository for the personal use of a former President of the United States.

(g)*(1)* When the Archivist considers it *to* be in the public interest, he may **[**accept gifts or bequests of money or other property**]** *solicit and accept gifts or bequests of money or other property,* for the purpose of maintaining, operating, protecting, or improving a Presidential archival depository. The proceeds of gifts or bequests, together with the proceeds from fees or from sales of historical materials, copies or reproductions, catalogs, or other items, having to do with a Presidential archival depository, shall be paid into *an account* in the National Archives Trust Fund *and shall* be held, administered, and expended for the benefit and in the interest of the Presidential archival depository in connection with which they were received, **[**including administrative and custodial expenses as the Archivist determines.**]** *and for the same purposes and objects, including custodial and administrative services for which appropriations for the maintenance, operation, protection, or improvement of Presidential archival depositories might be expended.*

(2) The Archivist shall provide for the establishment in such Trust Fund of separate endowments for the maintenance of the land, facility and equipment of each Presidential archival depository, to which shall be credited any gifts or bequests received under paragraph (1) that are offered for that purpose. Income to each such endowment shall be available to cover the cost of facility operations, but shall not be available for the performance of archival functions under this title.

(3) The Archivist shall not accept or take title to any land, facility or equipment under subparagraph (A) of subseciton (a)(1), or enter into any agreement to use any land, facility or equipment under subparagraph (B) of such subsection for the purpose of creating a Presidential archival depository, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this subsection in an endowment with respect to such depository, an amount for the purpose of maintaining such land, facility and equipment equal to—

(A) the product of—(i) the total cost of acquiring or constructing such facility and of acquiring and installing such equipment multiplied by (ii) 20 percent; plus

(B)(i) if title to the land is to be vested in the United States, the product of—(I) the total cost of acquiring the land upon which such facility is located or such other measure of the value of such land as is mutually agreed upon by the Archivist and the donor multiplied by (II) 20 percent; or

(ii) if title to the land is not to be vested in the United States, the product of—(I) the total cost to the donor of any improvements to the land upon which such facility is located (other than such facility and equipment) multiplied by (II) 20 percent; plus

(C) if the Presidential archival depository will exceed 70,000 square feet in area, an amount equal to the product of—

(i) the sum of—

(I) the total cost described in clause (i) of subparagraph (A); plus

(II) the total cost described in subclause (I) or (II) of subparagraph (B)(i), as the case may be, multiplied by

(ii) the percentage obtained by dividing the number of square feet by which such depository will exceed 70,000 square feet by 70,000.

(4) If a proposed physical or material change or addition to a Presidential archival depository would result in an increase in the costs of facility operations, the Archivist may not accept any gift under subparagraph (c) of paragraph (1) for the purpose of making such a change or addition, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this sub-section in an endowment with respect to such depository, an amount for the purpose of maintaining the land, facility, and equipment of such depository equal to the difference between—

(A) the amount which, pursuant to paragraph (3) of this subsection, would have been required to have been available for deposit in such endowment with respect to such depository if such change or addition had been included in such depository on—

(i) the date on which the Archivist took title to the land, facility, and equipment for such depository under subparagraph (A) of subsection (a)(1); or

(ii) the date on which the Archivist entered into an agreement for the creation of such depository under subparagraph (B) of such paragraph,

as the case may be; minus

(B) the amount which, pursuant to paragraph (3) of this subsection, was required to be available for deposit in such endowment with respect to such depository on the date the Archivist took such title or entered into such agreement, as the case may be.

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